MT LEGISLATIVE HISTORY

Chapter 537 1977

Bill (H) 758 S _____ Original bill & hist. ✓ C

H. Committee on Judiciary			S. Committee on Judiciary		
Hearing Date(s)	FEB 18	✓ C	Hearing Date(s)	MAR 21	✓ C
	FEB 19	✓ C		_____	___ C
	_____	___ C		_____	___ C
	_____	___ C		_____	___ C
Date Out	_____	___ C		_____	___ C

Did this bill originate in an interim committee? ___ Yes ___ No

Committee _____ Report _____

HOUSE JUDICIARY COMMITTEE

45th Legislature

Bill No.	Subject Matter	Date In	Sponsor	Hearing Date	Committee Action	Date Out
HB 455	providing for the duties of personal representatives or special administrators in estates - alien heirs	2-11	Meloy	Fri 18	do pass as amended	2-19
HB 466	open-pit extraction of metallic ores is not an unrestricted public purpose etc. eminent domain	2-11	Driscoll	Monday 21	do not pass	2-22
HB 486	amend Montana water use act to facilitate appropriation of water rights for wildlife or recreational uses.	2-11	Frates	Fri 18	do not pass	2-24
HB 457	clarifying the powers of attorney general and county attorneys under the Montana unfair trade practices etc.	2-11	Vincent	Fri 18	do pass	2-23
HB 758	to avoid jurisdictional conflict between states in child custody proceedings etc.	2-11	South	Fri 18	do pass	2-19
HB 759	provide that local political subdivision shall reimburse dept. natural resources for its cost - floodplain etc.	2-11	Day	Tues 15 water	do pass	2-19

INTRODUCED BY House BILL NO. 758
South Ramirez

A BILL FOR AN ACT ENTITLED: "AN ACT TO AVOID JURISDICTIONAL CONFLICT BETWEEN STATES IN CHILD CUSTODY PROCEEDINGS; PROVIDING INTERSTATE JUDICIAL ASSISTANCE IN CUSTODY CASES TO DISCOURAGE ILLEGAL SCHEMES TO GAIN POSSESSION OF A CHILD IN CONTESTED CUSTODY PROCEEDINGS; AMENDING SECTIONS 48-317 AND 48-331, R.C.M. 1947."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Short title. This act may be cited as the "Uniform Child Custody Jurisdiction Act".

Section 2. Purposes of act — construction of provisions. (1) The general purposes of this act are to:

(a) avoid jurisdictional competition and conflict with courts of other states in matters of child custody which have in the past resulted in the shifting of children from state to state with harmful effects on their well-being;

(b) promote cooperation with the courts of other states to the end that a custody decree is rendered in that state which can best decide the case in the interest of the child;

(c) assure that litigation concerning the custody of a child takes place ordinarily in the state with which the child and his family have the closest connection and where significant evidence concerning his care, protection, training, and personal relationships is most readily available and that courts of this state decline the exercise of jurisdiction when the child and his family have a closer connection with another state;

(d) discourage continuing controversies over child custody in the interest of greater stability of home environment and of secure family relationships for the child;

(e) deter abductions and other unilateral removals of children undertaken to obtain custody awards;

(f) avoid relitigation of custody decisions of other states in this state insofar as feasible;

(g) facilitate the enforcement of custody decrees of other states;

(h) promote and expand the exchange of information and other forms of mutual assistance between the courts of this state and those of other states concerned with the same child; and

(i) make uniform the law of those states which enact it.

(2) This act shall be construed to promote the general purposes stated in this section.

Section 3. Definitions. As used in this act, the

following definitions apply:

(1) "Contestant" means a person, including a parent, who claims a right to custody or visitation rights with respect to a child.

(2) "Custody determination" means a court decision and court orders and instructions providing for the custody of a child, including visitation rights. It does not include a decision relating to child support or any other monetary obligation of any person.

(3) "Custody proceeding" includes proceedings in which a custody determination is one of several issues, such as an action for divorce or separation, and includes issues of custody in adoption proceedings. A "custody proceeding" is not a proceeding pursuant to Title 10, chapter 12, or Title 10, chapter 13.

(4) "Decree" or "custody decree" means a custody determination contained in a judicial decree or order made in a custody proceeding and includes an initial decree and a modification decree.

(5) "Home state" means the state in which the child, immediately preceding the time involved, lived with his parents, a parent, or a person acting as parent, for at least 6 consecutive months and in the case of a child less than 6 months old the state in which the child lived from birth with any of the persons mentioned. Periods of

temporary absence of any of the named persons are counted as part of the 6-month or other period.

(6) "Initial decree" means the first custody decree concerning a particular child.

(7) "Modification decree" means a custody decree which modifies or replaces a prior decree, whether made by the court which rendered the prior decree or by another court.

(8) "Physical custody" means actual possession and control of a child.

(9) "Person acting as parent" means a person, other than a parent, who has physical custody of a child and who has either been awarded custody by a court or claims a right to custody.

(10) "State" means any state, territory, or possession of the United States, the Commonwealth of Puerto Rico, and the District of Columbia.

Section 4. Jurisdiction. The jurisdictional provisions of 48-331 apply to this act.

Section 5. Notice and opportunity to be heard. Before making a decree under this act, reasonable notice and opportunity to be heard shall be given to the contestants, any parent whose parental rights have not been previously terminated, and any person who has physical custody of the child. If any of these persons are outside this state, notice and opportunity to be heard shall be given pursuant

to [section 6].

Section 6. Notice to persons outside this state — submission to jurisdiction. (1) Notice required for the exercise of jurisdiction over a person outside this state shall be given in a manner reasonably calculated to give actual notice and may be:

(a) by personal delivery outside this state in the manner prescribed for service of process within this state;

(b) in the manner prescribed by the law of the place in which the service is made for service of process in that place in an action in any of its courts of general jurisdiction;

(c) by any form of mail addressed to the person to be served and requesting a receipt; or

(d) as directed by the court including publication, if other means of notification are ineffective.

(2) Notice under this section shall be served, mailed, or delivered or last published at least 10 days before any hearing in this state.

(3) Proof of service outside this state may be made by affidavit of the individual who made the service or in the manner prescribed by the law of this state, the order pursuant to which the service is made, or the law of the place in which the service is made. If service is made by mail, proof may be a receipt signed by the addressee or

other evidence of delivery to the addressee.

(4) Notice is not required if a person submits to the jurisdiction of the court.

Section 7. Simultaneous proceedings in other states. (1) A court of this state may not exercise its jurisdiction under this act if at the time of filing the petition a proceeding concerning the custody of the child was pending in a court of another state exercising jurisdiction substantially in conformity with this act unless the proceeding is stayed by the court of the other state because this state is a more appropriate forum or for other reasons.

(2) Before hearing the petition in a custody proceeding, the court shall examine the pleadings and other information supplied by the parties under [section 10] and shall consult the child custody registry established under [section 17] concerning the pendency of proceedings with respect to the child in other states. If the court has reason to believe that proceedings may be pending in another state, it shall direct an inquiry to the state court administrator or other appropriate official of the other state.

(3) If the court is informed during the course of the proceeding that a proceeding concerning the custody of the child was pending in another state before the court assumed jurisdiction, it shall stay the proceeding and communicate

with the court in which the other proceeding is pending to the end that the issue may be litigated in the more appropriate forum and that information be exchanged in accordance with [sections 20 through 23]. If a court of this state has made a custody decree before being informed of a pending proceeding in a court of another state, it shall immediately inform that court of the fact. If the court is informed that a proceeding was commenced in another state after it assumed jurisdiction, it shall likewise inform the other court to the end that the issues may be litigated in the more appropriate forum.

Section 8. Inconvenient forum. (1) A court which has jurisdiction under this act to make an initial or modification decree may decline to exercise its jurisdiction any time before making a decree if it finds that it is an inconvenient forum to make a custody determination under the circumstances of the case and that a court of another state is a more appropriate forum.

(2) A finding of inconvenient forum may be made upon the court's own motion or upon motion of a party or a guardian ad litem or other representative of the child.

(3) In determining if it is an inconvenient forum, the court shall consider if it is in the interest of the child that another state assume jurisdiction. For this purpose it may take into account the following factors, among others:

(a) if another state is or recently was the child's home state;

(b) if another state has a closer connection with the child and his family or with the child and one or more of the contestants;

(c) if substantial evidence concerning the child's present or future care, protection, training, and personal relationships is more readily available in another state;

(d) if the parties have agreed on another forum which is no less appropriate; and

(e) if the exercise of jurisdiction by a court of this state would contravene any of the purposes stated in [section 2].

(4) Before determining whether to decline or retain jurisdiction, the court may communicate with a court of another state and exchange information pertinent to the assumption of jurisdiction by either court with a view to assuring that jurisdiction will be exercised by the more appropriate court and that a forum will be available to the parties.

(5) If the court finds that it is an inconvenient forum and that a court of another state is a more appropriate forum, it may dismiss the proceedings or it may stay the proceedings upon condition that a custody proceeding be promptly commenced in another named state or

upon any other conditions which may be just and proper, including the condition that a moving party stipulate his consent and submission to the jurisdiction of the other forum.

(6) The court may decline to exercise its jurisdiction under this act if a custody determination is incidental to an action for divorce or another proceeding while retaining jurisdiction over the divorce or other proceeding.

(7) If it appears to the court that it is clearly an inappropriate forum, it may require the party who commenced the proceedings to pay, in addition to the costs of the proceedings in this state, necessary travel and other expenses, including attorneys' fees, incurred by other parties or their witnesses. Payment is to be made to the clerk of the court for remittance to the proper party.

(8) Upon dismissal or stay of proceedings under this section the court shall inform the court found to be the more appropriate forum of this fact or, if the court which would have jurisdiction in the other state is not certainly known, transmit the information to the court administrator or other appropriate official for forwarding to the appropriate court.

(9) Any communication received from another state informing this state of a finding of inconvenient forum because a court of this state is the more appropriate forum

shall be filed in the custody registry of the appropriate court. Upon assuming jurisdiction, the court of this state shall inform the original court of this fact.

Section 9. Jurisdiction declined by reason of conduct. (1) If the petitioner for an initial decree has wrongfully taken the child from another state or has engaged in similar reprehensible conduct, the court may decline to exercise jurisdiction if this is just and proper under the circumstances.

(2) Unless required in the interest of the child, the court may not exercise its jurisdiction to modify a custody decree of another state if the petitioner, without consent of the person entitled to custody, has improperly removed the child from the physical custody of the person entitled to custody or has improperly retained the child after a visit or other temporary relinquishment of physical custody. If the petitioner has violated any other provision of a custody decree of another state, the court may decline to exercise its jurisdiction if this is just and proper under the circumstances.

(3) In appropriate cases a court dismissing a petition under this section may charge the petitioner with necessary travel and other expenses, including attorneys' fees, incurred by other parties or their witnesses.

Section 10. Information under oath to be submitted to

the court. (1) Each party in a custody proceeding in his first pleading or in an affidavit attached to that pleading shall give information under oath as to the child's present address, the places where the child has lived within the last 5 years, and the names and present addresses of the persons with whom the child has lived during that period. In this pleading or affidavit each party shall further declare under oath whether:

(a) he has participated (as a party, witness, or in any other capacity) in any other litigation concerning the custody of the same child in this or any other state;

(b) he has information of any custody proceeding concerning the child pending in a court of this or any other state; and

(c) he knows of any person not a party to the proceedings who has physical custody of the child or claims to have custody or visitation rights with respect to the child.

(2) If the declaration as to any of the above items is in the affirmative, the declarant shall give additional information under oath as required by the court. The court may examine the parties under oath as to details of the information furnished and as to other matters pertinent to the court's jurisdiction and the disposition of the case.

(3) Each party has a continuing duty to inform the

court of any custody proceeding concerning the child in this or any other state of which he obtained information during this proceeding.

Section 11. Additional parties. If the court learns from information furnished by the parties pursuant to [section 10] or from other sources that a person not a party to the custody proceeding has physical custody of the child or claims to have custody or visitation rights with respect to the child, it shall order that person to be joined as a party and to be duly notified of the pendency of the proceeding and of his joinder as a party. If the person joined as a party is outside this state, he shall be served with process or otherwise notified in accordance with [section 6].

Section 12. Appearance of parties and the child. (1) The court may order any party to the proceeding who is in this state to appear personally before the court. If that party has physical custody of the child, the court may order that he appear personally with the child.

(2) If a party to the proceeding whose presence is desired by the court is outside this state with or without the child, the court may order that the notice given under [section 6] include a statement directing that party to appear personally with or without the child and declaring that failure to appear may result in a decision adverse to

that party.

(3) If a party to the proceeding who is outside this state is directed to appear under subsection (2) or desires to appear personally before the court with or without the child, the court may require another party to pay to the clerk of the court travel and other necessary expenses of the party so appearing and of the child, if this is just and proper under the circumstances.

Section 13. Binding force and res judicata effect of custody decree. A custody decree rendered by a court of this state which had jurisdiction under [section 4] binds all parties who have been served in this state or notified in accordance with [section 6] or who have submitted to the jurisdiction of the court and who have been given an opportunity to be heard. As to these parties the custody decree is conclusive as to all issues of law and fact decided and as to the custody determination made unless and until that determination is modified pursuant to law, including the provisions of this act.

Section 14. Recognition of out-of-state custody decrees. The courts of this state shall recognize and enforce an initial or modification decree of a court of another state which had assumed jurisdiction under statutory provisions substantially in accordance with this act or which was made under factual circumstances meeting the

jurisdictional standards of the act, so long as this decree has not been modified in accordance with jurisdictional standards substantially similar to those of this act.

Section 15. Modification of custody decree of another state. (1) If a court of another state has made a custody decree, a court of this state may not modify that decree unless it appears to the court of this state that the court which rendered the decree does not now have jurisdiction under jurisdictional prerequisites substantially in accordance with this act or has declined to assume jurisdiction to modify the decree and the court of this state has jurisdiction.

(2) If a court of this state is authorized under subsection (1) and [section 9] to modify a custody decree of another state, it shall give due consideration to the transcript of the record and other documents of all previous proceedings submitted to it in accordance with [section 23].

Section 16. Filing and enforcement of custody decree of another state. (1) A certified copy of a custody decree of another state may be filed in the office of the clerk of any district court of this state. The clerk shall treat the decree in the same manner as a custody decree of the district court of this state. A custody decree so filed has the same effect and shall be enforced in like manner as a custody decree rendered by a court of this state.

(2) A person violating a custody decree of another state which makes it necessary to enforce the decree in this state may be required to pay necessary travel and other expenses, including attorneys' fees, incurred by the party entitled to the custody or his witnesses.

Section 17. Registry of out-of-state custody decrees and proceedings. The clerk of each district court shall maintain a registry in which he shall enter the following:

(1) certified copies of custody decrees of other states received for filing;

(2) communications as to the pendency of custody proceedings in other states;

(3) communications concerning a finding of inconvenient forum by a court of another state; and

(4) other communications or documents concerning custody proceedings in another state which may affect the jurisdiction of a court of this state or the disposition to be made by it in a custody proceeding.

Section 18. Certified copies of custody decree. The clerk of the district court of this state, at the request of the court of another state or at the request of any person who is affected by or has a legitimate interest in a custody decree, shall certify and forward a copy of the decree to that court or person.

Section 19. Taking testimony in another state. In

addition to other procedural devices available to a party, any party to the proceeding or a guardian ad litem or other representative of the child may adduce testimony of witnesses, including parties and the child, by deposition or otherwise, in another state. The court on its own motion may direct that the testimony of a person be taken in another state and may prescribe the manner in which and the terms upon which the testimony shall be taken.

Section 20. Hearings and studies in another state — orders to appear. (1) A court of this state may request the appropriate court of another state to hold a hearing to adduce evidence, to order a party to produce or give evidence under other procedures of that state, or to have social studies made with respect to the custody of a child involved in proceedings pending in the court of this state; and to forward to the court of this state certified copies of the transcript of the record of the hearing, the evidence otherwise adduced, or any social studies prepared in compliance with the request. The cost of the services may be assessed against the parties or, if necessary, ordered paid by the state.

(2) A court of this state may request the appropriate court of another state to order a party to custody proceedings pending in the court of this state to appear in the proceedings and, if that party has physical custody of

the child, to appear with the child. The request may state that travel and other necessary expenses of the party and of the child whose appearance is desired will be assessed against another party or will otherwise be paid.

Section 21. Assistance to courts of other states. (1) Upon request of the court of another state the courts of this state which are competent to hear custody matters may order a person in this state to appear at a hearing to adduce evidence or to produce or give evidence under other procedures available in this state or may order social studies to be made for use in a custody proceeding in another state. A certified copy of the transcript of the record of the hearing or the evidence otherwise adduced and any social studies prepared shall be forwarded by the clerk of the court to the requesting court.

(2) A person within this state may voluntarily give his testimony or statement in this state for use in a custody proceeding outside this state.

(3) Upon request of the court of another state a competent court of this state may order a person in this state to appear alone or with the child in a custody proceeding in another state. The court may condition compliance with the request upon assurance by the other state that state travel and other necessary expenses will be advanced or reimbursed.

Section 22. Preservation of documents for use in other states. In any custody proceeding in this state the court shall preserve the pleadings, orders and decrees, any record that has been made of its hearings, social studies, and other pertinent documents until the child reaches 18 years of age. Upon appropriate request of the court of another state, the court shall forward to the other court certified copies of any or all of such documents.

Section 23. Request for court records of another state. If a custody decree has been rendered in another state concerning a child involved in a custody proceeding pending in a court of this state, the court of this state upon taking jurisdiction of the case shall request of the court of the other state a certified copy of the transcript of any court record and other documents mentioned in [section 22].

Section 24. International application. The general policies of this act extend to the international area. The provisions of this act relating to the recognition and enforcement of custody decrees of other states apply to custody decrees and decrees involving legal institutions similar in nature to custody institutions rendered by appropriate authorities of other nations if reasonable notice and opportunity to be heard have been given to all affected persons.

Section 25. Priority. A custody proceeding which raises a question of existence or exercise of jurisdiction under this act shall be given calendar priority and handled expeditiously.

Section 26. Section 48-317, R.C.M. 1947, is amended to read as follows:

"48-317. Procedure — commencement — pleadings — abolition of existing defenses. (1) Except for proceedings coming under the Uniform Child Custody Jurisdiction Act, ~~All~~ all proceedings under this act are commenced and proceed in the manner provided by the Montana rules of civil procedure.

(2) The verified petition in a proceeding for dissolution of marriage or legal separation shall allege that the marriage is irretrievably broken and shall set forth:

(a) the age, occupation, and residence of each party and his length of residence in this state;

(b) the date of the marriage and the place at which it was registered;

(c) that the jurisdictional requirements of section 48-316 exist and that the marriage is irretrievably broken in that either

(i) the parties have lived separate and apart for a period of more than one hundred eighty (180) days next preceding the commencement of this proceeding, or

(ii) that there is serious marital discord which adversely affects the attitude of one or both of the parties towards the marriage, and that there is no reasonable prospect of reconciliation;

(d) the names, ages, and addresses of all living children of the marriage, and whether the wife is pregnant;

(e) any arrangements as to support, custody, and visitation of the children and maintenance of a spouse; and

(f) the relief sought.

(3) Either or both parties to the marriage may initiate the proceeding.

(4) If a proceeding is commenced by one of the parties, the other party must be served in the manner provided by the Montana rules of civil procedure and may within twenty (20) days after the date of service file a verified response. No decree may be entered until twenty (20) days after the date of service.

(5) Previously existing defenses to divorce and legal separation, including but not limited to condonation, connivance, collusion, recrimination, insanity, and lapse of time, are abolished.

(6) The court may join additional parties proper for the exercise of its authority to implement this act."

Section 27. Section 48-331, R.C.M. 1947, is amended to read as follows:

"48-331. Jurisdiction -- commencement of proceedings. (1) A court of this state competent to decide child custody matters has jurisdiction to make a child custody determination by initial or modification decree if:

(a) this state

(i) is the home state of the child at the time of commencement of the proceedings, or

(ii) had been the child's home state within six (6) months before commencement of the proceeding and the child is absent from this state because of his removal or retention by a person claiming his custody or for other reason, and a parent or person acting as parent continues to live in this state; or

(b) it is in the best interest of the child that a court of this state assume jurisdiction because

(i) the child and his parents, or the child and at least one contestant, have a significant connection with this state, and

(ii) there is available in this state substantial evidence concerning the child's present or future care, protection, training, and personal relationships; or

(c) the child is physically present in this state and

(i) has been abandoned or

(ii) it is necessary in an emergency to protect him because he has been subjected to or threatened with

mistreatment or abuse or is neglected or dependent; or

(d) (i) no other state has jurisdiction under prerequisites substantially in accordance with paragraphs (a), (b), or (c), or another state has declined to exercise jurisdiction on the ground that this state is the more appropriate forum to determine custody of the child, and

(ii) it is in his best interest that the court assume jurisdiction.

(2) Except under paragraphs (c) and (d) of subsection (1), physical presence in this state of the child, or of the child and one of the contestants, is not alone sufficient to confer jurisdiction on a court of this state to make a child custody determination.

(3) Physical presence of the child, while desirable, is not a prerequisite for jurisdiction to determine his custody.

(4) A child custody proceeding is commenced in the district court:

(a) by a parent, by filing a petition

(i) for dissolution or legal separation; or

(ii) for custody of the child in the county in which he is permanently resident or found; or

(b) by a person other than a parent, by filing a petition for custody of the child in the county in which he is permanently resident or found, but only if he is not in

the physical custody of one of his parents.

(5) Notice of a child custody proceeding shall be given to the child's parent, guardian, ~~and~~ custodian, those persons having physical custody of the child, and all other contestants, who may appear, be heard, and file a responsive pleading. The court, upon a showing of good cause, may permit intervention of other interested parties."

Section 28. Severability. If a part of this act is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of this act is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

-End-

JUDICIARY COMMITTEE

February 18, 1977

The regular meeting of the House Judiciary Committee was called to order by Chairman Scully at 7:30 a.m. in room 436 of the Capitol Building, Helena, Montana on Friday. All members were present except Representative Day, excused, to carry a bill.

Scheduled for hearing were House Bills 363, 411, 455, 457, 758, 761, and 763.

The hearing opened on House Bill 758.

REPRESENTATIVE SOUTH, DISTRICT #51:
The bill is to avoid conflict between states in child custody proceedings, providing interstate judicial assistance in custody cases to discourage illegal schemes to gain possession of a child in contested cases. There seems to be a constitutional restriction on what the federal government can do. Eight states have adopted this law. A parent might have custody in another state. I would ask you to look very favorably on this bill. He went to give examples of cases in which the child might be the subject of illegal schemes.

The hearing closed on House Bill 758.

THE HEARING OPENED ON HOUSE BILL 363.

REPRESENTATIVE COONEY, DISTRICT #83:
This bill would give the victim the right to decide if she would like to have her tests video-taped. The equipment is available right now. The concept is not new although it might be in Montana. The testimony of the victim and at the request of the victim, with the concurrence of the prosecuting attorney, may be recorded by means of videotape for presentation at the trial, and would be received as evidence.

TOM DOWLING, MONTANA COUNTY ATTORNEYS ASSOCIATION:
I think the bill has a couple of problems in language. He went on to talk about cases he was familiar with, such as the five year old victim of a sexual assault. This is another tool to bring these people to justice. However, the bill does need some cleaning up.

RICK CRONEN, MONTANA COUNTY ATTORNEY ASSOCIATION:
I would hope the committee would give this favorable attention. I think this might encourage further reporting. We feel that this is an option that should be available. I would like to ask that you support this bill.

REPRESENTATIVE COONEY:
I think this is a needed piece of legislation.

EXECUTIVE SESSION
HOUSE JUDICIARY COMMITTEE
February 19, 1977

HOUSE BILL #739:
The sub-committee reported on proposed amendments. The sub-committee consisted of Representatives Keyser, Seifert and Baeth. The proposed amendments will be presented to the committee at a later date.

HOUSE BILL #742:
REPRESENTATIVE RAMIREZ moved "do pass".
The motion carried with the following voting "no". Representatives Teague, Keyser, Seifert, Roth, McLane and Conroy.

HOUSE BILL #758:
REPRESENTATIVE KEYSER moved "do pass".
The motion carried with the vote unanimous.

HOUSE BILL #763:
REPRESENTATIVE RAMIREZ moved the adoption of the proposed amendments compiled by the sub-committee. The motion carried.
REPRESENTATIVE RAMIREZ moved the bill "do pass as amended".
The motion carried with the vote unanimous.

HOUSE JOINT RESOLUTION #59:
REPRESENTATIVE RAMIREZ moved "do pass".
The motion carried with the vote unanimous.

HOUSE JOINT RESOLUTION #63:
REPRESENTATIVE HOLMES presented a copy of the proposed amendments from the sub-committe and moved their adoption. The motion carried.
REPRESENTATIVE HOLMES moved "do pass as amended".
The motion carried with the vote unanimous.

HOUSE BILL #533:
REPRESENTATIVE RAMIREZ moved the adoption of the proposed amendments from the sub-committee. The motion carried.
REPRESENTATIVE KEYSER moved "do pass as amended".
The motion carried with the vote unanimous.

HOUSE JOINT RESOLUTION #23:
REPRESENTATIVE DAY reported from the water sub-committe and moved the adoption of the committee report. The motion carried with the vote unanimous.

HOUSE BILL #759:
REPRESENTATIVE DAY reported from the water sub-committee, and moved the adoption of the committee report "do pass". The motion carried with the vote unanimous.

FORTY-FIFTH LEGISLATIVE SESSION

1977

COMMITTEE ON JUDICIARY

BILL NO.	ENTERED COMM.	DATE CONSIDERED	OUT OF COMM.	DO PASS DATE	DO NOT PASS DATE	DO PASS AS AMEND. DATE	BE CONCURRED IN DATE	BE CONC. IN AS AMENDED DATE	BE NOT CONCURRED IN DATE
H.B. 589	2-17-77	3-21-77	3-24-77					3-24-77	
H.B. 590	2-17-77	3-2-77	4-1-77						4-1-77
H.B. 607	2-17-77	3-16-77	3-16-77					3-16-77	
H.B. 633	2-23-77	3-22-77	3-24-77						3-24-77
H.B. 647	3-5-77	3-28-77	3-31-77					3-31-77	
H.B. 654	2-25-77	3-25-77	4-6-77				4-6-77		
H.B. 668	3-2-77	3-14-77	3-24-77						3-24-77
H.B. 688	3-3-77	3-23-77	4-1-77						4-1-77
H.B. 713	3-7-77	3-26, 4-4, 4-5-77	4-5-77						4-5-77
H.B. 718	2-23-77	3-22-77	3-22-77					3-22-77	
H.B. 721	2-16-77	3-18-77	3-19-77				3-19-77		
H.B. 758	3-2-77	3-21-77	3-21-77				3-21-77		
H.B. 761	3-5-77	3-26-77	3-29-77						3-29-77
H.B. 761	3-29-77	3-31-77	Tabled 3-31-77						
H.B. 763	3-2-77	3-15-77	3-15-77					3-15-77	
H.B. 738	3-3-77	3-23-77	4-6-77					4-6-77	

(Separate Sheet for Senate, House Bills, and Resolutions)

MINUTES OF MEETING
SENATE JUDICIARY COMMITTEE
March 21, 1977

The meeting of this committee was called to order by Senator Turnage, Chairman, at 9:45 a.m. on the above date in Room 442 of the State Capitol Building.

ROLL CALL:

All members were present except Sen. Regan, Towe and Warden who were excused to attend other meetings.

Senator Roberts, Vice-chairman, assumed the Chair at this time.

CONSIDERATION OF HOUSE BILL 589:

Rep. Williams, District 70 at Laurel, sponsor of the bill, proposes to include drinking offenses in justice, municipal and city courts by this piece of legislation. The reason for this is that they can handle drinking by youths at any hour in these courts without waiting for the youth court which is in the district court and only meets Monday through Friday each week. This would act as a deterrent for youths drinking and driving after hours and on weekends, and it should help control the alcoholic consumption of youths as they could be hauled into court at the time of the offense instead of waiting for the youth court to meet. The acting Chairman said that the committee will consider this bill. There were no other proponent or opponents present.

CONSIDERATION OF HOUSE BILL 71:

Rep. Feda of District 4 at Glasgow, sponsor of the bill, told this committee that it had been previously heard by the Sen. Business and Industry Committee. The main question regarding this bill is on page 4, line 6. They have added that in order to allow the small businessman who does not own a computer to have a simplified method of figuring interest on installment contracts. There were no other proponents or opponents present. Rep. Feda was thanked for appearing and excused.

CONSIDERATION OF HOUSE BILL 758:

Rep. South of District 51 at Miles City, sponsor of the bill, said that this bill has to do with child custody and avoiding jurisdictional conflict between states in these matters. It is a matter of philosophy. There were no other proponents or opponents present. Sen. Roberts said he realizes the necessity for this type of legislation. Montana would be the 13th state to adopt this.

CONSIDERATION OF HOUSE JOINT RESOLUTION 63:

Rep. Holmes of District 67 at Billings, sponsor of the bill sai it would allow a legislative criminal justice drafting commission to be set up by the legislature and that it would be a working committe

This bill was put together by a lot of committees. It passed the House 86-4. The National Clearing House for Criminal Justice Planning bulletin says that 6 members of the legislature and 5 from the group on page 4 will make up the composition of this commission. There is great disparity in sentencing and this must be straightened out. The Board of Crime Control will be their staff and the Legislative Council will be their legal drafting staff. This group is to come up with a comprehensive plan. This is not a study commission but it is a working commission set up for 2 years. She made some recommendations to the committee. (See Exhibit 1)

At this time Sen. Murray arrived from another meeting.

Rep. Ramirez spoke as a proponent of the bill, saying the purpose of the bill is very good and that it will make some organization out of chaos in regard to sentencing, etc.. He thinks that this bill will accomplish a great deal.

Mike McGrath of the Department of Justice said that they wholeheartedly agree with Rep. Ramirez on this bill.

Paul Spengler of the Secretary of State's office and a professor at Carroll said that this commission will not be a duplication of the Montana Justice Commission.

There were no other proponents or opponents present.

Chuck O'Reilly, assistant director of the project, said there were other bills in the House and one in this committee which deal with the same subject and that the legislative subcommittee had prioritized which legislation should be introduced at this session.

DISPOSITION OF HOUSE BILL 758:

Sen. Roberts moved that HB 758 BE CONCURRED IN. The motion carried unanimously. He volunteered to carry this bill on 2nd Reading

DISPOSITION OF HOUSE BILL 71:

Sen. Roberts moved that HB 71 BE CONCURRED IN. The motion carried unanimously.

There being no further business, the committee adjourned at 11:00 a.m..

SENATOR JEAN A TURNAGE, Chairman

ROLL CALL

JUDICIARY COMMITTEE

45th LEGISLATIVE SESSION - - 1977 Date 3-21-77

NAME	PRESENT	ABSENT	EXCUSED
TURNAGE, Jean, Chairman	✓		
ROBERTS, Joe, Vice-Chairman	✓		—
MURRAY, William	✓		
OLSON, Stuart	✓		
LENSINK, Everett	✓		
REGAN, Pat			✓
TOWE, Tom	—		✓
WARDEN, Margaret			✓

SENATE [illegible] COMMITTEE

BILL [illegible] VISITORS' REGISTER DATE [illegible]

NAME	REPRESENTING	BILL #	(check one) SUPPORT	OPPOSE
[illegible]	[illegible]	755	[illegible]	
[illegible]	[illegible]	HJR 63	"	
Dick Nelson	Montana Power Co	HB 238	XX	
MIKE McGRATH	JUSTICE DEPT.	HJR 63	X	
Bob Smith	PSC	HB 238		

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY

HOUSE BILL NO. 758

INTRODUCED BY SOUTH, RAMIREZ

A BILL FOR AN ACT ENTITLED: "AN ACT TO AVOID JURISDICTIONAL CONFLICT BETWEEN STATES IN CHILD CUSTODY PROCEEDINGS; PROVIDING INTERSTATE JUDICIAL ASSISTANCE IN CUSTODY CASES TO DISCOURAGE ILLEGAL SCHEMES TO GAIN POSSESSION OF A CHILD IN CONTESTED CUSTODY PROCEEDINGS; AMENDING SECTIONS 48-317 AND 48-331, R.C.M. 1947."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Short title. This act may be cited as the "Uniform Child Custody Jurisdiction Act".

Section 2. Purposes of act -- construction of provisions. (1) The general purposes of this act are to:

(a) avoid jurisdictional competition and conflict with courts of other states in matters of child custody which have in the past resulted in the shifting of children from state to state with harmful effects on their well-being;

(b) promote cooperation with the courts of other states to the end that a custody decree is rendered in that state which can best decide the case in the interest of the child;

(c) assure that litigation concerning the custody of a child takes place ordinarily in the state with which the child and his family have the closest connection and where significant evidence concerning his care, protection, training, and personal relationships is most readily available and that courts of this state decline the exercise of jurisdiction when the child and his family have a closer connection with another state;

(d) discourage continuing controversies over child custody in the interest of greater stability of home environment and of secure family relationships for the child;

(e) deter abductions and other unilateral removals of children undertaken to obtain custody awards;

(f) avoid relitigation of custody decisions of other states in this state insofar as feasible;

(g) facilitate the enforcement of custody decrees of other states;

(h) promote and expand the exchange of information and other forms of mutual assistance between the courts of this state and those of other states concerned with the same child; and

(i) make uniform the law of those states which enact it.

(2) This act shall be construed to promote the general purposes stated in this section.

Section 3. Definitions. As used in this act, the

following definitions apply:

(1) "Contestant" means a person, including a parent, who claims a right to custody or visitation rights with respect to a child.

(2) "Custody determination" means a court decision and court orders and instructions providing for the custody of a child, including visitation rights. It does not include a decision relating to child support or any other monetary obligation of any person.

(3) "Custody proceeding" includes proceedings in which a custody determination is one of several issues, such as an action for divorce or separation, and includes issues of custody in adoption proceedings. A "custody proceeding" is not a proceeding pursuant to Title 10, chapter 12, or Title 10, chapter 13.

(4) "Decree" or "custody decree" means a custody determination contained in a judicial decree or order made in a custody proceeding and includes an initial decree and a modification decree.

(5) "Home state" means the state in which the child, immediately preceding the time involved, lived with his parents, a parent, or a person acting as parent, for at least 6 consecutive months and in the case of a child less than 6 months old the state in which the child lived from birth with any of the persons mentioned. Periods of

temporary absence of any of the named persons are counted as part of the 6-month or other period.

(6) "Initial decree" means the first custody decree concerning a particular child.

(7) "Modification decree" means a custody decree which modifies or replaces a prior decree, whether made by the court which rendered the prior decree or by another court.

(8) "Physical custody" means actual possession and control of a child.

(9) "Person acting as parent" means a person, other than a parent, who has physical custody of a child and who has either been awarded custody by a court or claims a right to custody.

(10) "State" means any state, territory, or possession of the United States, the Commonwealth of Puerto Rico, and the District of Columbia.

Section 4. Jurisdiction. The jurisdictional provisions of 48-331 apply to this act.

Section 5. Notice and opportunity to be heard. Before making a decree under this act, reasonable notice and opportunity to be heard shall be given to the contestants, any parent whose parental rights have not been previously terminated, and any person who has physical custody of the child. If any of these persons are outside this state, notice and opportunity to be heard shall be given pursuant

to [section 6].

Section 6. Notice to persons outside this state -- submission to jurisdiction. (1) Notice required for the exercise of jurisdiction over a person outside this state shall be given in a manner reasonably calculated to give actual notice and may be:

(a) by personal delivery outside this state in the manner prescribed for service of process within this state;

(b) in the manner prescribed by the law of the place in which the service is made for service of process in that place in an action in any of its courts of general jurisdiction;

(c) by any form of mail addressed to the person to be served and requesting a receipt; or

(d) as directed by the court including publication, if other means of notification are ineffective.

(2) Notice under this section shall be served, mailed, or delivered or last published at least 10 days before any hearing in this state.

(3) Proof of service outside this state may be made by affidavit of the individual who made the service or in the manner prescribed by the law of this state, the order pursuant to which the service is made, or the law of the place in which the service is made. If service is made by mail, proof may be a receipt signed by the addressee or

other evidence of delivery to the addressee.

(4) Notice is not required if a person submits to the jurisdiction of the court.

Section 7. Simultaneous proceedings in other states. (1) A court of this state may not exercise its jurisdiction under this act if at the time of filing the petition a proceeding concerning the custody of the child was pending in a court of another state exercising jurisdiction substantially in conformity with this act unless the proceeding is stayed by the court of the other state because this state is a more appropriate forum or for other reasons.

(2) Before hearing the petition in a custody proceeding, the court shall examine the pleadings and other information supplied by the parties under [section 10] and shall consult the child custody registry established under [section 17] concerning the pendency of proceedings with respect to the child in other states. If the court has reason to believe that proceedings may be pending in another state, it shall direct an inquiry to the state court administrator or other appropriate official of the other state.

(3) If the court is informed during the course of the proceeding that a proceeding concerning the custody of the child was pending in another state before the court assumed jurisdiction, it shall stay the proceeding and communicate

with the court in which the other proceeding is pending to the end that the issue may be litigated in the more appropriate forum and that information be exchanged in accordance with [sections 20 through 23]. If a court of this state has made a custody decree before being informed of a pending proceeding in a court of another state, it shall immediately inform that court of the fact. If the court is informed that a proceeding was commenced in another state after it assumed jurisdiction, it shall likewise inform the other court to the end that the issues may be litigated in the more appropriate forum.

Section 8. Inconvenient forum. (1) A court which has jurisdiction under this act to make an initial or modification decree may decline to exercise its jurisdiction any time before making a decree if it finds that it is an inconvenient forum to make a custody determination under the circumstances of the case and that a court of another state is a more appropriate forum.

(2) A finding of inconvenient forum may be made upon the court's own motion or upon motion of a party or a guardian ad litem or other representative of the child.

(3) In determining if it is an inconvenient forum, the court shall consider if it is in the interest of the child that another state assume jurisdiction. For this purpose it may take into account the following factors, among others:

(a) if another state is or recently was the child's home state;

(b) if another state has a closer connection with the child and his family or with the child and one or more of the contestants;

(c) if substantial evidence concerning the child's present or future care, protection, training, and personal relationships is more readily available in another state;

(d) if the parties have agreed on another forum which is no less appropriate; and

(e) if the exercise of jurisdiction by a court of this state would contravene any of the purposes stated in [section 2].

(4) Before determining whether to decline or retain jurisdiction, the court may communicate with a court of another state and exchange information pertinent to the assumption of jurisdiction by either court with a view to assuring that jurisdiction will be exercised by the more appropriate court and that a forum will be available to the parties.

(5) If the court finds that it is an inconvenient forum and that a court of another state is a more appropriate forum, it may dismiss the proceedings or it may stay the proceedings upon condition that a custody proceeding be promptly commenced in another named state or

upon any other conditions which may be just and proper, including the condition that a moving party stipulate his consent and submission to the jurisdiction of the other forum.

(6) The court may decline to exercise its jurisdiction under this act if a custody determination is incidental to an action for divorce or another proceeding while retaining jurisdiction over the divorce or other proceeding.

(7) If it appears to the court that it is clearly an inappropriate forum, it may require the party who commenced the proceedings to pay, in addition to the costs of the proceedings in this state, necessary travel and other expenses, including attorneys' fees, incurred by other parties or their witnesses. Payment is to be made to the clerk of the court for remittance to the proper party.

(8) Upon dismissal or stay of proceedings under this section the court shall inform the court found to be the more appropriate forum of this fact or, if the court which would have jurisdiction in the other state is not certainly known, transmit the information to the court administrator or other appropriate official for forwarding to the appropriate court.

(9) Any communication received from another state informing this state of a finding of inconvenient forum because a court of this state is the more appropriate forum

shall be filed in the custody registry of the appropriate court. Upon assuming jurisdiction, the court of this state shall inform the original court of this fact.

Section 9. Jurisdiction declined by reason of conduct. (1) If the petitioner for an initial decree has wrongfully taken the child from another state or has engaged in similar reprehensible conduct, the court may decline to exercise jurisdiction if this is just and proper under the circumstances.

(2) Unless required in the interest of the child, the court may not exercise its jurisdiction to modify a custody decree of another state if the petitioner, without consent of the person entitled to custody, has improperly removed the child from the physical custody of the person entitled to custody or has improperly retained the child after a visit or other temporary relinquishment of physical custody. If the petitioner has violated any other provision of a custody decree of another state, the court may decline to exercise its jurisdiction if this is just and proper under the circumstances.

(3) In appropriate cases a court dismissing a petition under this section may charge the petitioner with necessary travel and other expenses, including attorneys' fees, incurred by other parties or their witnesses.

Section 10. Information under oath to be submitted to

the court. (1) Each party in a custody proceeding in his first pleading or in an affidavit attached to that pleading shall give information under oath as to the child's present address, the places where the child has lived within the last 5 years, and the names and present addresses of the persons with whom the child has lived during that period. In this pleading or affidavit each party shall further declare under oath whether:

(a) he has participated (as a party, witness, or in any other capacity) in any other litigation concerning the custody of the same child in this or any other state;

(b) he has information of any custody proceeding concerning the child pending in a court of this or any other state; and

(c) he knows of any person not a party to the proceedings who has physical custody of the child or claims to have custody or visitation rights with respect to the child.

(2) If the declaration as to any of the above items is in the affirmative, the declarant shall give additional information under oath as required by the court. The court may examine the parties under oath as to details of the information furnished and as to other matters pertinent to the court's jurisdiction and the disposition of the case.

(3) Each party has a continuing duty to inform the

court of any custody proceeding concerning the child in this or any other state of which he obtained information during this proceeding.

Section 11. Additional parties. If the court learns from information furnished by the parties pursuant to [section 10] or from other sources that a person not a party to the custody proceeding has physical custody of the child or claims to have custody or visitation rights with respect to the child, it shall order that person to be joined as a party and to be duly notified of the pendency of the proceeding and of his joinder as a party. If the person joined as a party is outside this state, he shall be served with process or otherwise notified in accordance with [section 6].

Section 12. Appearance of parties and the child. (1) The court may order any party to the proceeding who is in this state to appear personally before the court. If that party has physical custody of the child, the court may order that he appear personally with the child.

(2) If a party to the proceeding whose presence is desired by the court is outside this state with or without the child, the court may order that the notice given under [section 6] include a statement directing that party to appear personally with or without the child and declaring that failure to appear may result in a decision adverse to

that party.

(3) If a party to the proceeding who is outside this state is directed to appear under subsection (2) or desires to appear personally before the court with or without the child, the court may require another party to pay to the clerk of the court travel and other necessary expenses of the party so appearing and of the child, if this is just and proper under the circumstances.

Section 13. Binding force and res judicata effect of custody decree. A custody decree rendered by a court of this state which had jurisdiction under [section 4] binds all parties who have been served in this state or notified in accordance with [section 6] or who have submitted to the jurisdiction of the court and who have been given an opportunity to be heard. As to these parties the custody decree is conclusive as to all issues of law and fact decided and as to the custody determination made unless and until that determination is modified pursuant to law, including the provisions of this act.

Section 14. Recognition of out-of-state custody decrees. The courts of this state shall recognize and enforce an initial or modification decree of a court of another state which had assumed jurisdiction under statutory provisions substantially in accordance with this act or which was made under factual circumstances meeting the

jurisdictional standards of the act, so long as this decree has not been modified in accordance with jurisdictional standards substantially similar to those of this act.

Section 15. Modification of custody decree of another state. (1) If a court of another state has made a custody decree, a court of this state may not modify that decree unless it appears to the court of this state that the court which rendered the decree does not now have jurisdiction under jurisdictional prerequisites substantially in accordance with this act or has declined to assume jurisdiction to modify the decree and the court of this state has jurisdiction.

(2) If a court of this state is authorized under subsection (1) and [section 9] to modify a custody decree of another state, it shall give due consideration to the transcript of the record and other documents of all previous proceedings submitted to it in accordance with [section 23].

Section 16. Filing and enforcement of custody decree of another state. (1) A certified copy of a custody decree of another state may be filed in the office of the clerk of any district court of this state. The clerk shall treat the decree in the same manner as a custody decree of the district court of this state. A custody decree so filed has the same effect and shall be enforced in like manner as a custody decree rendered by a court of this state.

(2) A person violating a custody decree of another state which makes it necessary to enforce the decree in this state may be required to pay necessary travel and other expenses, including attorneys' fees, incurred by the party entitled to the custody or his witnesses.

Section 17. Registry of out-of-state custody decrees and proceedings. The clerk of each district court shall maintain a registry in which he shall enter the following:

(1) certified copies of custody decrees of other states received for filing;

(2) communications as to the pendency of custody proceedings in other states;

(3) communications concerning a finding of inconvenient forum by a court of another state; and

(4) other communications or documents concerning custody proceedings in another state which may affect the jurisdiction of a court of this state or the disposition to be made by it in a custody proceeding.

Section 18. Certified copies of custody decree. The clerk of the district court of this state, at the request of the court of another state or at the request of any person who is affected by or has a legitimate interest in a custody decree, shall certify and forward a copy of the decree to that court or person.

Section 19. Taking testimony in another state. In

addition to other procedural devices available to a party, any party to the proceeding or a guardian ad litem or other representative of the child may adduce testimony of witnesses, including parties and the child, by deposition or otherwise, in another state. The court on its own motion may direct that the testimony of a person be taken in another state and may prescribe the manner in which and the terms upon which the testimony shall be taken.

Section 20. Hearings and studies in another state -- orders to appear. (1) A court of this state may request the appropriate court of another state to hold a hearing to adduce evidence, to order a party to produce or give evidence under other procedures of that state, or to have social studies made with respect to the custody of a child involved in proceedings pending in the court of this state; and to forward to the court of this state certified copies of the transcript of the record of the hearing, the evidence otherwise adduced, or any social studies prepared in compliance with the request. The cost of the services may be assessed against the parties or, if necessary, ordered paid by the state.

(2) A court of this state may request the appropriate court of another state to order a party to custody proceedings pending in the court of this state to appear in the proceedings and, if that party has physical custody of

the child, to appear with the child. The request may state that travel and other necessary expenses of the party and of the child whose appearance is desired will be assessed against another party or will otherwise be paid.

Section 21. Assistance to courts of other states. (1) Upon request of the court of another state the courts of this state which are competent to hear custody matters may order a person in this state to appear at a hearing to adduce evidence or to produce or give evidence under other procedures available in this state or may order social studies to be made for use in a custody proceeding in another state. A certified copy of the transcript of the record of the hearing or the evidence otherwise adduced and any social studies prepared shall be forwarded by the clerk of the court to the requesting court.

(2) A person within this state may voluntarily give his testimony or statement in this state for use in a custody proceeding outside this state.

(3) Upon request of the court of another state a competent court of this state may order a person in this state to appear alone or with the child in a custody proceeding in another state. The court may condition compliance with the request upon assurance by the other state that state travel and other necessary expenses will be advanced or reimbursed.

Section 22. Preservation of documents for use in other states. In any custody proceeding in this state the court shall preserve the pleadings, orders and decrees, any record that has been made of its hearings, social studies, and other pertinent documents until the child reaches 18 years of age. Upon appropriate request of the court of another state, the court shall forward to the other court certified copies of any or all of such documents.

Section 23. Request for court records of another state. If a custody decree has been rendered in another state concerning a child involved in a custody proceeding pending in a court of this state, the court of this state upon taking jurisdiction of the case shall request of the court of the other state a certified copy of the transcript of any court record and other documents mentioned in [section 22].

Section 24. International application. The general policies of this act extend to the international area. The provisions of this act relating to the recognition and enforcement of custody decrees of other states apply to custody decrees and decrees involving legal institutions similar in nature to custody institutions rendered by appropriate authorities of other nations if reasonable notice and opportunity to be heard have been given to all affected persons.

Section 25. Priority. A custody proceeding which raises a question of existence or exercise of jurisdiction under this act shall be given calendar priority and handled expeditiously.

Section 26. Section 48-317, R.C.M. 1947, is amended to read as follows:

"48-317. Procedure -- commencement -- pleadings -- abolition of existing defenses. (1) Except for proceedings coming under the Uniform Child Custody Jurisdiction Act, ~~All~~ all proceedings under this act are commenced and proceed in the manner provided by the Montana rules of civil procedure.

(2) The verified petition in a proceeding for dissolution of marriage or legal separation shall allege that the marriage is irretrievably broken and shall set forth:

(a) the age, occupation, and residence of each party and his length of residence in this state;

(b) the date of the marriage and the place at which it was registered;

(c) that the jurisdictional requirements of section 48-316 exist and that the marriage is irretrievably broken in that either

(i) the parties have lived separate and apart for a period of more than one hundred eighty (180) days next preceding the commencement of this proceeding, or

(ii) that there is serious marital discord which adversely affects the attitude of one or both of the parties towards the marriage, and that there is no reasonable prospect of reconciliation;

(d) the names, ages, and addresses of all living children of the marriage, and whether the wife is pregnant;

(e) any arrangements as to support, custody, and visitation of the children and maintenance of a spouse; and

(f) the relief sought.

(3) Either or both parties to the marriage may initiate the proceeding.

(4) If a proceeding is commenced by one of the parties, the other party must be served in the manner provided by the Montana rules of civil procedure and may within twenty (20) days after the date of service file a verified response. No decree may be entered until twenty (20) days after the date of service.

(5) Previously existing defenses to divorce and legal separation, including but not limited to condonation, connivance, collusion, recrimination, insanity, and lapse of time, are abolished.

(6) The court may join additional parties proper for the exercise of its authority to implement this act."

Section 27. Section 48-331, R.C.M. 1947, is amended to read as follows:

"48-331. Jurisdiction -- commencement of proceedings. (1) A court of this state competent to decide child custody matters has jurisdiction to make a child custody determination by initial or modification decree if:

(a) this state

(i) is the home state of the child at the time of commencement of the proceedings, or

(ii) had been the child's home state within six (6) months before commencement of the proceeding and the child is absent from this state because of his removal or retention by a person claiming his custody or for other reason, and a parent or person acting as parent continues to live in this state; or

(b) it is in the best interest of the child that a court of this state assume jurisdiction because

(i) the child and his parents, or the child and at least one contestant, have a significant connection with this state, and

(ii) there is available in this state substantial evidence concerning the child's present or future care, protection, training, and personal relationships; or

(c) the child is physically present in this state and

(i) has been abandoned or

(ii) it is necessary in an emergency to protect him because he has been subjected to or threatened with

mistreatment or abuse or is neglected or dependent; or

(d) (i) no other state has jurisdiction under prerequisites substantially in accordance with paragraphs (a), (b), or (c), or another state has declined to exercise jurisdiction on the ground that this state is the more appropriate forum to determine custody of the child, and

(ii) it is in his best interest that the court assume jurisdiction.

(2) Except under paragraphs (c) and (d) of subsection (1), physical presence in this state of the child, or of the child and one of the contestants, is not alone sufficient to confer jurisdiction on a court of this state to make a child custody determination.

(3) Physical presence of the child, while desirable, is not a prerequisite for jurisdiction to determine his custody.

(4) A child custody proceeding is commenced in the district court:

(a) by a parent, by filing a petition

(i) for dissolution or legal separation; or

(ii) for custody of the child in the county in which he is permanently resident or found; or

(b) by a person other than a parent, by filing a petition for custody of the child in the county in which he is permanently resident or found, but only if he is not in

the physical custody of one of his parents.

(5) Notice of a child custody proceeding shall be given to the child's parent, guardian, and custodian, <u>those persons having physical custody of the child, and all other contestants,</u> who may appear, be heard, and file a responsive pleading. The court, upon a showing of good cause, may permit intervention of other interested parties."

Section 28. Severability. If a part of this act is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of this act is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

-End-

HOUSE BILL NO. 758

INTRODUCED BY SOUTH, RAMIREZ

A BILL FOR AN ACT ENTITLED: "AN ACT TO AVOID JURISDICTIONAL CONFLICT BETWEEN STATES IN CHILD CUSTODY PROCEEDINGS; PROVIDING INTERSTATE JUDICIAL ASSISTANCE IN CUSTODY CASES TO DISCOURAGE ILLEGAL SCHEMES TO GAIN POSSESSION OF A CHILD IN CONTESTED CUSTODY PROCEEDINGS; AMENDING SECTIONS ~~48-317~~ 48-315 AND 48-331, R.C.M. 1947."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Short title. This act may be cited as the "Uniform Child Custody Jurisdiction Act".

Section 2. Purposes of act -- construction of provisions. (1) The general purposes of this act are to:

(a) avoid jurisdictional competition and conflict with courts of other states in matters of child custody which have in the past resulted in the shifting of children from state to state with harmful effects on their well-being;

(b) promote cooperation with the courts of other states to the end that a custody decree is rendered in that state which can best decide the case in the interest of the child;

(c) assure that litigation concerning the custody of a child takes place ordinarily in the state with which the

REFERENCE BILL
Second Printing

child and his family have the closest connection and where significant evidence concerning his care, protection, training, and personal relationships is most readily available and that courts of this state decline the exercise of jurisdiction when the child and his family have a closer connection with another state;

(d) discourage continuing controversies over child custody in the interest of greater stability of home environment and of secure family relationships for the child;

(e) deter abductions and other unilateral removals of children undertaken to obtain custody awards;

(f) avoid relitigation of custody decisions of other states in this state insofar as feasible;

(g) facilitate the enforcement of custody decrees of other states;

(h) promote and expand the exchange of information and other forms of mutual assistance between the courts of this state and those of other states concerned with the same child; and

(i) make uniform the law of those states which enact it.

(2) This act shall be construed to promote the general purposes stated in this section.

Section 3. Definitions. As used in this act, the

following definitions apply:

(1) "Contestant" means a person, including a parent, who claims a right to custody or visitation rights with respect to a child.

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(4) "Decree" or "custody decree" means a custody determination contained in a judicial decree or order made in a custody proceeding and includes an initial decree and a modification decree.

(5) "Home state" means the state in which the child, immediately preceding the time involved, lived with his parents, a parent, or a person acting as parent, for at least 6 consecutive months and in the case of a child less than 6 months old the state in which the child lived from birth with any of the persons mentioned. Periods of

temporary absence of any of the named persons are counted as part of the 6-month or other period.

(6) "Initial decree" means the first custody decree concerning a particular child.

(7) "Modification decree" means a custody decree which modifies or replaces a prior decree, whether made by the court which rendered the prior decree or by another court.

(8) "Physical custody" means actual possession and control of a child.

(9) "Person acting as parent" means a person, other than a parent, who has physical custody of a child and who has either been awarded custody by a court or claims a right to custody.

(10) "State" means any state, territory, or possession of the United States, the Commonwealth of Puerto Rico, and the District of Columbia.

Section 4. Jurisdiction. The jurisdictional provisions of 48-331 apply to this act.

Section 5. Notice and opportunity to be heard. Before making a decree under this act, reasonable notice and opportunity to be heard shall be given to the contestants, any parent whose parental rights have not been previously terminated, and any person who has physical custody of the child. If any of these persons are outside this state, notice and opportunity to be heard shall be given pursuant

to [section 6].

Section 6. Notice to persons outside this state -- submission to jurisdiction. (1) Notice required for the exercise of jurisdiction over a person outside this state shall be given in a manner reasonably calculated to give actual notice and may be:

(a) by personal delivery outside this state in the manner prescribed for service of process within this state;

(b) in the manner prescribed by the law of the place in which the service is made for service of process in that place in an action in any of its courts of general jurisdiction;

(c) by any form of mail addressed to the person to be served and requesting a receipt; or

(d) as directed by the court including publication, if other means of notification are ineffective.

(2) Notice under this section shall be served, mailed, or delivered or last published at least 10 days before any hearing in this state.

(3) Proof of service outside this state may be made by affidavit of the individual who made the service or in the manner prescribed by the law of this state, the order pursuant to which the service is made, or the law of the place in which the service is made. If service is made by mail, proof may be a receipt signed by the addressee or

other evidence of delivery to the addressee.

(4) Notice is not required if a person submits to the jurisdiction of the court.

Section 7. Simultaneous proceedings in other states. (1) A court of this state may not exercise its jurisdiction under this act if at the time of filing the petition a proceeding concerning the custody of the child was pending in a court of another state exercising jurisdiction substantially in conformity with this act unless the proceeding is stayed by the court of the other state because this state is a more appropriate forum or for other reasons.

(2) Before hearing the petition in a custody proceeding, the court shall examine the pleadings and other information supplied by the parties under [section 10] and shall consult the child custody registry established under [section 17] concerning the pendency of proceedings with respect to the child in other states. If the court has reason to believe that proceedings may be pending in another state, it shall direct an inquiry to the state court administrator or other appropriate official of the other state.

(3) If the court is informed during the course of the proceeding that a proceeding concerning the custody of the child was pending in another state before the court assumed jurisdiction, it shall stay the proceeding and communicate

with the court in which the other proceeding is pending to the end that the issue may be litigated in the more appropriate forum and that information be exchanged in accordance with [sections 20 through 23]. If a court of this state has made a custody decree before being informed of a pending proceeding in a court of another state, it shall immediately inform that court of the fact. If the court is informed that a proceeding was commenced in another state after it assumed jurisdiction, it shall likewise inform the other court to the end that the issues may be litigated in the more appropriate forum.

Section 8. Inconvenient forum. (1) A court which has jurisdiction under this act to make an initial or modification decree may decline to exercise its jurisdiction any time before making a decree if it finds that it is an inconvenient forum to make a custody determination under the circumstances of the case and that a court of another state is a more appropriate forum.

(2) A finding of inconvenient forum may be made upon the court's own motion or upon motion of a party or a guardian ad litem or other representative of the child.

(3) In determining if it is an inconvenient forum, the court shall consider if it is in the interest of the child that another state assume jurisdiction. For this purpose it may take into account the following factors, among others:

(a) if another state is or recently was the child's home state;

(b) if another state has a closer connection with the child and his family or with the child and one or more of the contestants;

(c) if substantial evidence concerning the child's present or future care, protection, training, and personal relationships is more readily available in another state;

(d) if the parties have agreed on another forum which is no less appropriate; and

(e) if the exercise of jurisdiction by a court of this state would contravene any of the purposes stated in [section 2].

(4) Before determining whether to decline or retain jurisdiction, the court may communicate with a court of another state and exchange information pertinent to the assumption of jurisdiction by either court with a view to assuring that jurisdiction will be exercised by the more appropriate court and that a forum will be available to the parties.

(5) If the court finds that it is an inconvenient forum and that a court of another state is a more appropriate forum, it may dismiss the proceedings or it may stay the proceedings upon condition that a custody proceeding be promptly commenced in another named state or

upon any other conditions which may be just and proper, including the condition that a moving party stipulate his consent and submission to the jurisdiction of the other forum.

(6) The court may decline to exercise its jurisdiction under this act if a custody determination is incidental to an action for divorce or another proceeding while retaining jurisdiction over the divorce or other proceeding.

(7) If it appears to the court that it is clearly an inappropriate forum, it may require the party who commenced the proceedings to pay, in addition to the costs of the proceedings in this state, necessary travel and other expenses, including attorneys' fees, incurred by other parties or their witnesses. Payment is to be made to the clerk of the court for remittance to the proper party.

(8) Upon dismissal or stay of proceedings under this section the court shall inform the court found to be the more appropriate forum of this fact or, if the court which would have jurisdiction in the other state is not certainly known, transmit the information to the court administrator or other appropriate official for forwarding to the appropriate court.

(9) Any communication received from another state informing this state of a finding of inconvenient forum because a court of this state is the more appropriate forum

shall be filed in the custody registry of the appropriate court. Upon assuming jurisdiction, the court of this state shall inform the original court of this fact.

Section 9. Jurisdiction declined by reason of conduct. (1) If the petitioner for an initial decree has wrongfully taken the child from another state or has engaged in similar reprehensible conduct, the court may decline to exercise jurisdiction if this is just and proper under the circumstances.

(2) Unless required in the interest of the child, the court may not exercise its jurisdiction to modify a custody decree of another state if the petitioner, without consent of the person entitled to custody, has improperly removed the child from the physical custody of the person entitled to custody or has improperly retained the child after a visit or other temporary relinquishment of physical custody. If the petitioner has violated any other provision of a custody decree of another state, the court may decline to exercise its jurisdiction if this is just and proper under the circumstances.

(3) In appropriate cases a court dismissing a petition under this section may charge the petitioner with necessary travel and other expenses, including attorneys' fees, incurred by other parties or their witnesses.

Section 10. Information under oath to be submitted to

the court. (1) Each party in a custody proceeding in his first pleading or in an affidavit attached to that pleading shall give information under oath as to the child's present address, the places where the child has lived within the last 5 years, and the names and present addresses of the persons with whom the child has lived during that period. In this pleading or affidavit each party shall further declare under oath whether:

(a) he has participated (as a party, witness, or in any other capacity) in any other litigation concerning the custody of the same child in this or any other state;

(b) he has information of any custody proceeding concerning the child pending in a court of this or any other state; and

(c) he knows of any person not a party to the proceedings who has physical custody of the child or claims to have custody or visitation rights with respect to the child.

(2) If the declaration as to any of the above items is in the affirmative, the declarant shall give additional information under oath as required by the court. The court may examine the parties under oath as to details of the information furnished and as to other matters pertinent to the court's jurisdiction and the disposition of the case.

(3) Each party has a continuing duty to inform the

court of any custody proceeding concerning the child in this or any other state of which he obtained information during this proceeding.

Section 11. Additional parties. If the court learns from information furnished by the parties pursuant to [section 10] or from other sources that a person not a party to the custody proceeding has physical custody of the child or claims to have custody or visitation rights with respect to the child, it shall order that person to be joined as a party and to be duly notified of the pendency of the proceeding and of his joinder as a party. If the person joined as a party is outside this state, he shall be served with process or otherwise notified in accordance with [section 6].

Section 12. Appearance of parties and the child. (1) The court may order any party to the proceeding who is in this state to appear personally before the court. If that party has physical custody of the child, the court may order that he appear personally with the child.

(2) If a party to the proceeding whose presence is desired by the court is outside this state with or without the child, the court may order that the notice given under [section 6] include a statement directing that party to appear personally with or without the child and declaring that failure to appear may result in a decision adverse to

that party.

(3) If a party to the proceeding who is outside this state is directed to appear under subsection (2) or desires to appear personally before the court with or without the child, the court may require another party to pay to the clerk of the court travel and other necessary expenses of the party so appearing and of the child, if this is just and proper under the circumstances.

Section 13. Binding force and res judicata effect of custody decree. A custody decree rendered by a court of this state which had jurisdiction under [section 4] binds all parties who have been served in this state or notified in accordance with [section 6] or who have submitted to the jurisdiction of the court and who have been given an opportunity to be heard. As to these parties the custody decree is conclusive as to all issues of law and fact decided and as to the custody determination made unless and until that determination is modified pursuant to law, including the provisions of this act.

Section 14. Recognition of out-of-state custody decrees. The courts of this state shall recognize and enforce an initial or modification decree of a court of another state which had assumed jurisdiction under statutory provisions substantially in accordance with this act or which was made under factual circumstances meeting the

jurisdictional standards of the act, so long as this decree has not been modified in accordance with jurisdictional standards substantially similar to those of this act.

Section 15. Modification of custody decree of another state. (1) If a court of another state has made a custody decree, a court of this state may not modify that decree unless it appears to the court of this state that the court which rendered the decree does not now have jurisdiction under jurisdictional prerequisites substantially in accordance with this act or has declined to assume jurisdiction to modify the decree and the court of this state has jurisdiction.

(2) If a court of this state is authorized under subsection (1) and [section 9] to modify a custody decree of another state, it shall give due consideration to the transcript of the record and other documents of all previous proceedings submitted to it in accordance with [section 23].

Section 16. Filing and enforcement of custody decree of another state. (1) A certified copy of a custody decree of another state may be filed in the office of the clerk of any district court of this state. The clerk shall treat the decree in the same manner as a custody decree of the district court of this state. A custody decree so filed has the same effect and shall be enforced in like manner as a custody decree rendered by a court of this state.

(2) A person violating a custody decree of another state which makes it necessary to enforce the decree in this state may be required to pay necessary travel and other expenses, including attorneys' fees, incurred by the party entitled to the custody or his witnesses.

Section 17. Registry of out-of-state custody decrees and proceedings. The clerk of each district court shall maintain a registry in which he shall enter the following:

(1) certified copies of custody decrees of other states received for filing;

(2) communications as to the pendency of custody proceedings in other states;

(3) communications concerning a finding of inconvenient forum by a court of another state; and

(4) other communications or documents concerning custody proceedings in another state which may affect the jurisdiction of a court of this state or the disposition to be made by it in a custody proceeding.

Section 18. Certified copies of custody decree. The clerk of the district court of this state, at the request of the court of another state or at the request of any person who is affected by or has a legitimate interest in a custody decree, shall certify and forward a copy of the decree to that court or person.

Section 19. Taking testimony in another state. In

addition to other procedural devices available to a party, any party to the proceeding or a guardian ad litem or other representative of the child may adduce testimony of witnesses, including parties and the child, by deposition or otherwise, in another state. The court on its own motion may direct that the testimony of a person be taken in another state and may prescribe the manner in which and the terms upon which the testimony shall be taken.

Section 20. Hearings and studies in another state -- orders to appear. (1) A court of this state may request the appropriate court of another state to hold a hearing to adduce evidence, to order a party to produce or give evidence under other procedures of that state, or to have social studies made with respect to the custody of a child involved in proceedings pending in the court of this state; and to forward to the court of this state certified copies of the transcript of the record of the hearing, the evidence otherwise adduced, or any social studies prepared in compliance with the request. The cost of the services may be assessed against the parties or, if necessary, ordered paid by the state.

(2) A court of this state may request the appropriate court of another state to order a party to custody proceedings pending in the court of this state to appear in the proceedings and, if that party has physical custody of

the child, to appear with the child. The request may state that travel and other necessary expenses of the party and of the child whose appearance is desired will be assessed against another party or will otherwise be paid.

Section 21. Assistance to courts of other states. (1) Upon request of the court of another state the courts of this state which are competent to hear custody matters may order a person in this state to appear at a hearing to adduce evidence or to produce or give evidence under other procedures available in this state or may order social studies to be made for use in a custody proceeding in another state. A certified copy of the transcript of the record of the hearing or the evidence otherwise adduced and any social studies prepared shall be forwarded by the clerk of the court to the requesting court.

(2) A person within this state may voluntarily give his testimony or statement in this state for use in a custody proceeding outside this state.

(3) Upon request of the court of another state a competent court of this state may order a person in this state to appear alone or with the child in a custody proceeding in another state. The court may condition compliance with the request upon assurance by the other state that state travel and other necessary expenses will be advanced or reimbursed.

Section 22. Preservation of documents for use in other states. In any custody proceeding in this state the court shall preserve the pleadings, orders and decrees, any record that has been made of its hearings, social studies, and other pertinent documents until the child reaches 18 years of age. Upon appropriate request of the court of another state, the court shall forward to the other court certified copies of any or all of such documents.

Section 23. Request for court records of another state. If a custody decree has been rendered in another state concerning a child involved in a custody proceeding pending in a court of this state, the court of this state upon taking jurisdiction of the case shall request of the court of the other state a certified copy of the transcript of any court record and other documents mentioned in [section 22].

Section 24. International application. The general policies of this act extend to the international area. The provisions of this act relating to the recognition and enforcement of custody decrees of other states apply to custody decrees and decrees involving legal institutions similar in nature to custody institutions rendered by appropriate authorities of other nations if reasonable notice and opportunity to be heard have been given to all affected persons.

Section 25. Priority. A custody proceeding which raises a question of existence or exercise of jurisdiction under this act shall be given calendar priority and handled expeditiously.

Section 26. ~~Section 48-317, R.C.M. 1947, is amended to read as follows:~~

~~"48-317. Procedure -- commencement -- pleadings -- abolition of existing defenses. (1) Except for proceedings coming under the Uniform Child Custody Jurisdiction Act, All~~ all proceedings under this act are commenced ~~and proceed in the manner provided by the Montana rules of civil procedure.~~

~~(2) The verified petition in a proceeding for dissolution of marriage or legal separation shall allege that the marriage is irretrievably broken and shall set forth:~~

~~(a) the age, occupation, and residence of each party and his length of residence in this state;~~

~~(b) the date of the marriage and the place at which it was registered;~~

~~(c) that the jurisdictional requirements of section 48-316 exist and that the marriage is irretrievably broken in that either~~

~~(i) the parties have lived separate and apart for a period of more than one hundred eighty (180) days next preceding the commencement of this proceeding, or~~

~~(ii) that there is serious marital discord which adversely affects the attitude of one or both of the parties towards the marriage and that there is no reasonable prospect of reconciliation;~~

~~(d) the names, ages, and addresses of all living children of the marriage, and whether the wife is pregnant;~~

~~(e) any arrangements as to support, custody, and visitation of the children and maintenance of a spouse; and~~

~~(f) the relief sought.~~

~~(3) Either or both parties to the marriage may initiate the proceeding.~~

~~(4) If a proceeding is commenced by one of the parties, the other party must be served in the manner provided by the Montana rules of civil procedure and may within twenty (20) days after the date of service file a verified response. No decree may be entered until twenty (20) days after the date of service.~~

~~(5) Previously existing defenses to divorce and legal separation, including but not limited to condonation, connivance, collusion, recrimination, insanity, and lapse of time, are abolished.~~

~~(6) The court may join additional parties proper for the exercise of its authority to implement this act."~~

SECTION 48-315, R.C.M. 1947, IS AMENDED TO READ AS FOLLOWS:

"48-315. Application of the Montana rules of civil

procedure to proceedings under this act. (1) ~~The~~ Except for proceedings coming under the uniform child custody jurisdiction act, the Montana rules of civil procedure apply to all proceedings under this act, except as otherwise provided in this act.

(2) A proceeding for dissolution of marriage, legal separation, or declaration of invalidity of marriage shall be entitled "In re the Marriage of _____ and _____". A custody or support proceeding shall be entitled "In re the (Custody) (Support) of _____".

(3) The initial pleading in all proceedings under this act shall be denominated a petition. A responsive pleading shall be denominated a response. Other pleadings, and all pleadings in other matters under this act, shall be denominated as provided in the Montana rules of civil procedure.

(4) In this act, "decree" includes\"judgment".

(5) A decree of dissolution or of legal separation, if made, shall not be awarded to one of the parties, but shall provide that it affects the status previously existing between the parties in the manner decreed."

Section 27. Section 48-331, R.C.M. 1947, is amended to read as follows:

"48-331. Jurisdiction -- commencement of proceedings. (1) A court of this state competent to decide child custody

matters has jurisdiction to make a child custody determination by initial or modification decree if:

(a) this state

(i) is the home state of the child at the time of commencement of the proceedings, or

(ii) had been the child's home state within six (6) months before commencement of the proceeding and the child is absent from this state because of his removal or retention by a person claiming his custody or for other reason, and a parent or person acting as parent continues to live in this state; or

(b) it is in the best interest of the child that a court of this state assume jurisdiction because

(i) the child and his parents, or the child and at least one contestant, have a significant connection with this state, and

(ii) there is available in this state substantial evidence concerning the child's present or future care, protection, training, and personal relationships; or

(c) the child is physically present in this state and

(i) has been abandoned or

(ii) it is necessary in an emergency to protect him because he has been subjected to or threatened with mistreatment or abuse or is neglected or dependent; or

(d) (i) no other state has jurisdiction under

prerequisites substantially in accordance with paragraphs (a), (b), or (c), or another state has declined to exercise jurisdiction on the ground that this state is the more appropriate forum to determine custody of the child, and

(ii) it is in his best interest that the court assume jurisdiction.

(2) Except under paragraphs (c) and (d) of subsection (1), physical presence in this state of the child, or of the child and one of the contestants, is not alone sufficient to confer jurisdiction on a court of this state to make a child custody determination.

(3) Physical presence of the child, while desirable, is not a prerequisite for jurisdiction to determine his custody.

(4) A child custody proceeding is commenced in the district court:

(a) by a parent, by filing a petition

(i) for dissolution or legal separation; or

(ii) for custody of the child in the county in which he is permanently resident or found; or

(b) by a person other than a parent, by filing a petition for custody of the child in the county in which he is permanently resident or found, but only if he is not in the physical custody of one of his parents.

(5) Notice of a child custody proceeding shall be

given to the child's parent, guardian, ~~and~~ custodian, those persons having physical custody of the child, and all other contestants, who may appear, be heard, and file a responsive pleading. The court, upon a showing of good cause, may permit intervention of other interested parties."

Section 28. Severability. If a part of this act is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of this act is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

-End-